IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1456 OF 2004

VIJAY DATTARAM NAKASHE)

Adarsh Nagar, "B" Committee)

Chawl No.-7, Room No. 13, J. R.)

Boricha Marg, Mumbai 400 011) ... PETITIONER

vs

1. SHRI A.N. ROY)

The Commissioner of Police)

Brihan Mumbai;)

2. THE STATE OF MAHARASHTRA)

At the instance of Sr.)

Inspector of Police, Agripada)

Police Stn., Mumbai.)

3. THE SUPERINTENDENT)

Nashik Road Central Prison)

Nashik.).. RESPONDENTS

Mr. A.Majeed Memon for petitioner

Mrs. A. S. Pai, APP

CORAM:-SMT. RANJANA DESAI &

A. S. OKA, JJ.

DATED:-18-10-2004

ORAL JUDGMENT:-(Per Smt. Ranjana Desai, J.)

The petitioner (for convenience "the detenu") is detained by the Commissioner of Police, Brihan Mumbai under order of detention dated 31st March, 2004, issued under the provisions of The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 ("the said Act" for short) with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The order of detention, grounds of detention and the material in support thereof were served on the detenu on 2.4.04 and he was detained. In this petition, the said order is challenged.

2. The order of detention rests on L.A.C. No. 1431/2003 registered at Agripada Police Station on 22-12-2003, C.R. No. 296/03 registered at Agripada Police Station on the same day under Sections 452, 324, 427, 506(II) of I.P.C. read with Sections 4, and 27 of the Arms Act and two in-camera statements of witnesses A and B recorded on 21-1-04 and 22-1-04 respectively.

3. We have heard Mr. Memon learned counsel appearing for the detenu at great length. Mr. Memon firstly contended that the grounds of detention indicate non-application of mind on the part of the detaining authority. He submitted that there is a patent error in the grounds of detention to which neither the detaining authority has applied his mind nor the other high ranking officers who have filed affidavits in this petition have applied their mind. The learned counsel submitted that there is no explanation about this mistake in

any of the affidavits.

4. Mr. Memon contended that in ground 5(a) it is alleged that the petitioner was arrested on 22.12.03 at 15-20 hrs. by the Agripada Police on the complaint of PC Uttam Chavan for allegedly possessing a chopper. However, in ground 5(b) it is alleged that the petitioner along with his associates assaulted his business rival Kashinath Chavan after he returned from his business on 22.12.03, after mid-night at 01.00 hrs. on 23.12.03. The learned counsel submitted that admittedly the petitioner was in police custody on the night of 23.12.03 and hence ground 5(b) is on the face of it false. This submission of Mr. Memon appears attractive but on a closer scrutiny of the material in support of the grounds, we find that there is no substance in it.

5. It is pertinent to note that in the First Information Report of C.R. No. 296/03 the date of this incident is shown as 22.2.03 and time is shown as 01.00 hrs. that means this incident took place at 1 a.m. on 22.12.03. This is further clear from the statement made by the wife of Kashinath Chavan. She has clearly stated that on 22.12.03 at 1 a.m. when her husband was having his dinner the detenu and his associates came to their house armed with weapons. It appears to us that though complainant Chavan has stated that on 22.12.03 at night when he closed his business and was having his dinner at 1 a.m, the detenu and his associates entered the house, what he in fact wishes to convey is that it is in the early hours of 22.12.03 that he had come home and was having his dinner at 1 a.m.

6. Having perused the F.I.R. and the statements we are of the opinion that there is no inconsistency or any mistake which it can be said was not noticed by the detaining

authority.

7. It appears that the offence registered at C.R. No. 296 of 2003 was committed on 22.12.03 at 1 a.m. After committing this offence the detenu and his associates ran away. At 15-20 hrs. i.e. 3-20 p.m. on the same day i.e. on 22.12.03, the detenu was arrested in connection with L.A.C. No. 1431/03. On 24.12.03, he was taken in custody from the Addl. Chief M.M. 46th Court, Mazgaon, Mumbai, on transfer warrant in C.R. No. 296/03. If the grounds and the material in support thereof are read in their proper perspective, it is clear that there is no non-application of mind. This submission of Mr. Memon deserves to be rejected and it is rejected as such.

8. Mr. Memon then contended that the incidents which are narrated in the grounds of detention do not indicate any serious offence. They are individual instances committed against business rivals and as such they do not affect public order. He contended that the detaining authority was wrong in coming to a conclusion that on account of the said incident public order is affected. We are unable to accept this submission of the learned counsel.

9. In L.A.C. No. 1431/03 at 3-20p.m. in the afternoon the detenu was found in possession of 17" long chopper. After his arrest in this case since his involvement in C.R. No. 296/03 was disclosed, he was arrested in that case on 24.12.03 by taking his custody from Addl. C.M.M. on transfer warrant. This incident was committed prior to the police nabbing him with a 17" long chopper at 3-20 p.m. on 22.12.03.

10. It appears from the complaint of Kashinath Chavan that he is doing hawking business of eggs scramble and pav on a pulling cart in the locality of J. R. Boricha Marg. The detenu is also doing the business of Vada Pav in the area of Boricha Marg. As there was a lot of rush at Kashinath's pulling cart many of the said customers being the opponents of the detenu, the detenu bore grudge against him. On two occasions, he had picked quarrels with the complainant, abused him and assaulted his wife. In this connection Kashinath Chavan had recorded two N.C. complaints at N. M. Joshi Marg Police Station. The detenu had threatened him about the said complaints.

11. On 22.12.03 at about 01.00 hrs. when he was taking dinner in his house, the detenu accompanied by his associates Ajay, Murudkar and Girish Padwal came in front of his house. The detenu was armed with a chopper and his associates were armed with iron rods. The detenu shouted in a loud voice abusing Kashinath Chavan as to why he had lodged complaint against him. The complainant asked the purpose of his visit. When the detenu was on the verge of assaulting the complainant with chopper, the complainant tried to obstruct the blow with his right hand, which resulted in injury on his right hand. At the same time his associates assaulted the complainant with iron rods on his shoulder, back and legs. When the detenu and his associates were assaulting the complainant his wife intervened but detenu and his associates assaulted her also. The complainant and his wife shouted loudly for help. However, out of fear as the detenu is a dreaded gangsters and criminal, nobody came forward to help them. Thereafter the detenu and his associates broke the window of his house, caused damage to the roof and ran away. While going they threatened the complainant that he should not report the matter to the police.

12. In L.A.C. No. 1431 of 2003 the detenu was released on bail on 27.1.04 and in C.R. No. 296 of 2003, he was granted bail on 3.1.04 but he availed bail on 30.1.04. While he was in custody confidential enquiries were made into his criminal activities and statement of witness A came to be recorded on 21.1.04. In his statement witness A deposed about the incident which occurred on 1st December, 2003 at about 20.00 hrs. when the detenu had threatened him and asked for Hafta. Witness A gave him Rs.500/- which he accepted and told him that on the next occasion he should keep the entire amount ready and make payment. After threatening him the detenu and his associates went away. Statement of witness B was recorded on 22.1.04 in which he has deposed about an incident which had occurred in the third week of November, 2003 at 21-30 hrs. Witness B has also deposed about extortion activities of the detenu. The detenu had asked for Hafta at the point of chopper. Out of fear witness B had given Rs.850/ to the detenu. The detenu threatened him that he should not report the matter to the police and then went away. These two statements indicate that on account of detenu's activities people residing in the area are experiencing a sense of fear. It is abundantly clear that the detenu's activities have unleashed a wave of terror in the concerned area.

13. If the first two cases are read with the two in-camera statements, it is clear that the detenu has become a menace to the society. In our opinion the satisfaction reached by the detaining authority that the detenu is a dangerous person within the meaning of the said Act, cannot be faulted.

14. In this connection, we may refer to Amanulla Khan Kudeatalla Khan Pathan v. State

of Gujarat, 1999 Cri. L. J. 3504. In that case the Supreme Court was considering the order of detention under the Gujarat Prevention of Anti-Social Activities Act, 1985 provisions of which are pari materia with the provisions of the said Act. The Supreme Court considered as to who could be called a dangerous person. The detenu therein belonged to a gang as in the present case. The detaining authority had relied upon one case registered under Section 120-B, 387 and 506(2) of the I.P.C. and two in-camera statements. The in-camera statements revealed that the detenu was indulging in extortion activities. The Supreme Court observed that the detaining authority had considered the three different incidents, happened on three different dates and not a solitary incident and, therefore, the test of repeatedness or continuity of the activity is fully satisfied and the satisfaction of the detaining authority holding the detenu to be a "dangerous person" is not vitiated in any manner. In our opinion, the present case is covered by the above observations of the Supreme Court.

15. Mr. Memon also contended that the reliance placed by the detaining authority on In-camera statements is misplaced. No particulars about the incidents mentioned in the in-camera statements have been given to the detenu. The in-camera statements are vague and, therefore, satisfaction based on in-camera statements is vitiated.

16. In this connection we may refer to Smt. Smt. Phulwari Jagdambaprasad Pathak v. Shri R. H. Mendonca & Ors., JT 2000 (8) SC 209. In that case the Supreme Court considered the question whether in-camera statements of persons/witnesses can be utilised for the purpose of arriving at subjective satisfaction of the detaining authority for passing the order of detention. The Supreme Court held that in the absence of any

provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve the power vested in the detaining authority should not be unduly restricted. The Supreme Court further observed that it is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the said Act. That will depend on the facts and situation of a case. The Supreme Court further observed "Presumably, that is why the Parliament did not make any provision in the Act in that regard and left the matter to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed." In our opinion, the incamera statements in the present case have a nexus with the object of the said Act. In view of the above observations of the Supreme Court, this submission of Mr. Memon must fail.

17. Lastly Mr. Memon contended that there is a delay in issuing the order of detention. He submitted that the in-camera statements were recorded on 21.1.04 and 22.1.04. However, the order of detention is passed on 31st March, 2004. This delay in the opinion of Mr. Memon has snapped the live link. We are unable to appreciate this contention of Mr. Memon.

18. In our opinion, in his affidavit the detaining authority has properly explained the delay. The detaining authority has stated that the complaint pertaining to L.A.C. No. 1431 of 2003 was registered on 22.12.2003, C.R. No. 296 of 2003 was registered on 22.12.2003. The detenu was arrested in L.A.C. No. 1431 of 2003 on 22.12.2003.

Thereafter, the detenu was arrested on transfer warrant in C.R. No. 296 of 2003 on 24.12.2003. The in-camera statements of witnesses came to be recorded on 21.1.04 and 22.1.04. The proposal in this case was submitted on 28.1.04. 24.1.04, 25.1.04 and 26.1.04 were holidays. The proposal was forwarded through proper channel. It was first placed before D.C.P. Zone-III. He went through all the papers and put his endorsement on 31.1.2004. Thereafter the papers were forwarded to the Senior Inspector of Police, PCB, CID. He went through the papers and put his endorsement on 9.2.2004. 1.2.04, 2.2.04 and 8.2.04 were holidays. Thereafter the papers were forwarded to the Deputy Commissioner of Police (Preventive). The Dy. Commissioner of Police (Preventive) went through the papers and put his endorsement on 10.2.04. Thereafter the papers were forwarded to the Additional Commissioner of Police (Crime). 14.2.04, 15.2.04, 18.2.04 and 19.2.04 were holidays. The Additional Commissioner of Police considered the material and put his endorsement on 21.2.2004. The detaining authority after perusing all the papers placed before him gave his approval to the proposal on 26.2.2004. 22.2.04 was a holiday. All the papers were then forwarded to the Sponsoring Authority for the purpose of fair typing. After completing the necessary work, the Sponsoring Authority sent the papers to Senior P.I. PCB, CID. The Sr. Inspector of Police, PCB, CID checked all the documents and made his endorsement on 26.3.2004. Thereafter the papers were forwarded to Dy. Commissioner of Police (Preventive). He endorsed them on 29.3.04. 27.3.04 and 28.3.04 were holidays. On 31.3.04 after considering the entire material, the detaining authority finalised the grounds of detention and issued the order of detention.

19. Shri Surinder Kumar, Addl. Commissioner of Police has also filed his affidavit

explaining the time taken at sponsoring authority's end. He has stated that the sponsoring authority forwarded the proposal for detention of the detenu on 28.1.04. Thereafter it was forwarded to D.C.P. Zone III and after his endorsement it is forwarded to various other authorities. The proposal along with the papers after endorsement of D.C.P. dated 10.2.04 was forwarded to Addl. Commissioner of Police. From 11.2.04 to 13.2.04 he was on official training at Haryana. 14.2.04 and 15.2.04 were holidays. Thereafter the papers were placed before him. 18.2.04 and 19..04 were holidays. On 21.2.04 he went through the proposal and papers and made his endorsement.

20. Affidavit is also being filed by Shri Jagannath P. Chakke, Assistant Police Inspector attached to Agripada Police Station. As regards the time taken by Asst. Police Inspector, he has stated as under:

6. "I say that after the Detaining Authority went through the proposal and all the papers and he was of the opinion that it was a fit case for detention of the detenuy and he gave his endorsement to that effect on 26.2.04. I say that the Detaining Authority carefuly went through all the papers and the proposal and formulated the draft grounds of detention. Thereafter, on 27.2.2004 the papers were forwarded to Sr. P.I. P.C.B. C.I.D. Thereafter, all the papers were then forwarded to the Sponsoring Authority i.e. Agripada Police Station for the purpose of fair typing, for preparing the translation of the documents in the language known to the Detenu and for preparing the necessary sets of documents etc. It is submitted that there were in all 214 pages in the compilation of documents of the detenu. The said compilation of documents were translated in Marathi language which is the

language known to the detenu.

7. After completing all the requirements i.e. translations, typing and zerox etc. I forwarded the proposal alongwith the necessary sets of documents as per procedure to the Senior P.I. P.C.B. C.I.D. on 26.3.2004 It is stated that 28.2.2004, 29.2.2004, 2.3.2004, 7.3.2004, 13.3.2004, 14.3.2004 and 21.3.2004 were holidays.

8. I say that as stated earlier the papers in this case were submitted on 26.3.2004. After receiving the papers, the Sr.P.I. P.C.B. C.I.D. carefully went through all the papers and gave his endorsement on 26.3.2004. Thereafter the papers were forwarded to Deputy Commissioner of Police (P) who gave his endorsement on 29.3.2004. It is stated that 27.3.2004 and 28.3.2004 were holidays. Thereafter, the papers were forwarded to the Detaining Authority. Thereafter, the Detaining Authority once again carefully went through the proposal and the papers accompanying the same and finalized the grounds of detention and contemporaneously issued the Order of Detention on 31.3.2004. In view of the facts and circumstances of this case, it is denied that there is any delayin issuing the Order of Detention."

21. In view of the above affidavits, in our opinion, there is no unexplained inordinate delay in issuing the order of detention. The delay is properly explained. Having considered the detenu's

potentiality and preponsity to indulge in prejudicial activities in future, in our opinion it cannot be said that the live link was snapped. Hence the argument that there is any delay in issuing the order of detention must be rejected. No other submissions were advanced by Mr. Memon. In the view that we have taken, the impugned order is confirmed. The

petition is rejected.

(SMT. RANJANA DESAI, J.)

(A. S. OKA, J.)